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December 23, 2001

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Bay State Gas Company, D.T.E. 02-73

Dear Secretary Cottrell,

On December 5, 2002, Utility Workers Union of America, AFL-CIO, Local 273 (the "Union") filed a petition to intervene as a full party ("Intervention") in this proceeding. Bay State Gas Company ("Bay State" or "Company") filed an opposition to the Union's petition. On December 11, 2002, the Hearing Officer issued a ruling denying the Union's petition for full intervention and, instead, granted the Union limited participant status.¹ The Hearing Officer denied the Union the ability to cross-examine Company witnesses, but did allow the Union to conduct discovery, and be placed on the service list and submit briefs at the conclusion of the evidentiary hearings. The Hearing Officer further indicated that if the Union had cross-examination questions based on Bay State's responses to the Union information requests, the Union could submit them to the bench for consideration prior to the commencement of the evidentiary hearing in D.T.E. 02-73. On December 20, 2002, the Union appealed the Hearing Officer's Ruling to the full commission. The Attorney General submits this letter in support of

¹ Consistent with Department rules (220 C.M.R. 1.03), the Union set forth several examples of how it and its members are substantially or specifically affected by this proceeding: (1) a decline in jobs due to financial difficulties of Bay State Gas' parent company; (2) prior participation in Department proceedings; (4) ratepayer status of its members; (3) ability to provide the Department information it would otherwise not obtain. Notwithstanding the Union's arguments, the Hearing Officer summarily dismissed those arguments with no explanation of why the Union had not met the Department's standard for full intervention. See Hearing Officer Ruling, p. 1. ("After due consideration, I find these reasons do not support Local 273's claim that it is substantially and specifically affected in this \$50 million refinancing by a company whose assets are approximately \$1 billion."). Compare *Massachusetts Institute of Technology v. Department of Public Utilities*, 425 Mass. 856, 869 (1997) (" . . . G.L. c. 30A, § 11(8), requires the decision of the department to 'be accompanied by a statement of reasons ... including determination of each issue of fact or law necessary to the decision'.").

the Union's appeal.

The Department of Telecommunications and Energy ("Department") routinely recognizes that unions are substantially and specifically affected by the decisions and actions of the utility companies or their management. There is ample Department precedent for allowing unions to fully participate in a broad range of cases pending before the Department.² *Boston Edison Company/Commonwealth Gas Company*, D.T.E. 98-119/126 (1999); *Boston Edison Company*, DTE 98-118 (1999); *Boston Edison Company*, D.T.E. 97-113 (1998); *Boston Edison Company*, D.T.E. 97-63 (1998); *Boston Edison Company*, D.T.E. 96-23 (1998); *Boston Edison Company*, D.T.E. 97-95 (1999); *Massachusetts Electric Company*, D.T.E. 96-25 (1997). The Hearing Officer's ruling is inconsistent with the Department's long established precedent of allowing unions to fully participate in utility cases.³

Intervention in Department proceedings by interested parties allows for the development of a full record upon which an informed decision can be based. The Commission should grant the Union's appeal.

Sincerely,

Wilner Borgella, Jr
Assistant Attorney General

WB/wb

cc: Caroline O'Brien, Hearing Officer
Service List

² The Attorney General represents the interests of consumer, not Unions or their members, in proceedings before the Department. *See* G.L. 12 § 11E.

³ Indeed, even the bench recognized the value of the Union's participation and extended the extraordinary offer to review and perhaps ask follow-up discovery questions on the Union's behalf. *See* Tr., p. 10.